

COMMENTS ON S. 1935

(Senator Proxmire's Proposed Amendments to
Section 102 of the National Security Act of
1947, as Amended)

General Comments

It is difficult, if not impossible, to legislate morality which seems to be Senator Proxmire's goal especially in subsection (C) of his amendments which would preclude the Agency from engaging in "any illegal activity within the United States." Second, as pointed out in a recent editorial in the Philadelphia Inquirer, it seems rather useless to attempt to pass a law forbidding the Central Intelligence Agency from doing what it is already forbidden to do, that is, exercising any "police-type" law enforcement or internal security operations. Third, Several of Senator Proxmire's provisions (especially subsections (B) and (D) are unconstitutional since they preclude certain activities unless specifically authorized by committees of the Congress.

Distinction Between Domestic Activities on the one Hand and
Internal Security and Law Enforcement on the Other.

There is nothing in the National Security Act of 1947 or the Central Intelligence Act of 1949 which precludes the Agency from performing activities merely because they are carried on within the United States. In

their anxiety to level criticism at the Agency some persons have jumped to the conclusion that CIA is precluded by law from engaging in any activities within the United States. The existing law places no such restrictions on the Agency. Furthermore, if the Agency were precluded from engaging in any domestic activities it would be impossible for it to carry out a number of foreign intelligence activities which it is specifically directed to perform under the law. In addition, it would make it impossible for the Director of Central Intelligence to carry out the responsibility placed upon him for the protection of intelligence sources and methods for such a responsibility necessarily includes the conduct of investigations of security leaks and other matters within the U.S.

Foreign Intelligence Function.

If it is Senator Proxmire's intention to limit CIA's domestic activities to those matters directly related to its foreign intelligence functions (which we feel is the intention of existing law), this could be accomplished by amending Section 102(d) of the National Security Act of 1947 to read as follows:

"(d) . . .

"(1) to advise the National Security Council in matters concerning such foreign intelligence activities of the Government departments and agencies as relate to national security;

"(2) to make recommendations to the National Security Council for the coordination of such foreign intelligence activities of the departments and agencies of the Government as relate to the national

"(3) to correlate and evaluate foreign intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: Provided, That the Agency shall have no police, subpoena, law-enforcement powers, or internal-security functions: Provided further, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: And provided further, That the Director of Central Intelligence shall be responsible for protecting foreign intelligence sources and methods from unauthorized disclosure,

"(4) to perform, for the benefit of the existing foreign intelligence agencies, such additional services of common concern as the National Security Council determines can be more efficiently accomplished centrally;

"(5) to perform such other functions and duties related to foreign intelligence affecting the national security as the National Security Council may from time to time direct. "

Specific Comments by Section Are Contained in Attachment "A. "

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403), is amended by adding at the end thereof a new subsection as follows:

"(g)(1) Nothing in this or any other Act shall be construed as authorizing the Central Intelligence Agency to—

"(A) carry out, directly or indirectly, within the United States, either on its own or in cooperation or conjunction with any other department, agency, organization, or individual any police or police-type operation or activity, any law enforcement operation or activity, or any internal security operation or activity: Provided, however, that nothing in this Act shall be construed to prohibit the Central Intelligence Agency from providing for the protection of its installations or conducting security investigations of its personnel and persons having a need for access to its information;

"(B) this wording is deleted on the grounds that it is patently unconstitutional;

"(C) participate, directly or indirectly, in any illegal activity within the United States; or

"(D) this wording is deleted on the grounds that it is patently unconstitutional.

"(2) Deleted as not being necessary since (D) has been eliminated.

CONGRESSIONAL RECORD

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"(g) (1) Nothing in this or any other Act shall be construed as authorizing the Central Intelligence Agency to—

"(A) carry out, directly or indirectly, within the United States, either on its own or in cooperation or conjunction with any other department, agency, organization, or individual any police or police-type operation or activity, any law enforcement operation or activity, or any internal security operation or activity;

"(B) provide assistance of any kind, directly or indirectly, to any other department or agency of the Federal Government, to any department or agency of any State or local government, or to any officer or employee of any such department or agency engaged in police or police-type operations or activities, law enforcement operations or activities, or internal security operations or activities within the United States unless such assistance is provided with the prior, specific written approval of the CIA Oversight Subcommittees of the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives;

"(C) participate, directly or indirectly, in any illegal activity within the United States; or

"(D) engage in any covert action in any foreign country unless such action has been specifically approved in writing by the CIA Oversight Subcommittees of the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives.

"(2) As used in paragraph (1) (D) of this subsection, the term 'covert action' means covert action as defined by the National Security Council based on the commonly ac-

cepted understanding of that term within the intelligence community of the Federal Government and the practices of the intelligence community of the Federal Government during the period 1950 through 1970."